

House Engrossed Senate Bill

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 183

SENATE BILL 1036

AN ACT

AMENDING TITLE 12, CHAPTER 17, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 12-2604 AND 12-2605; RELATING TO CLAIMS AGAINST LICENSED PROFESSIONALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 17, article 1, Arizona Revised Statutes,
3 is amended by adding sections 12-2604 and 12-2605, to read:

4 12-2604. Expert witness qualifications; medical malpractice
5 actions

6 A. IN AN ACTION ALLEGING MEDICAL MALPRACTICE, A PERSON SHALL NOT GIVE
7 EXPERT TESTIMONY ON THE APPROPRIATE STANDARD OF PRACTICE OR CARE UNLESS THE
8 PERSON IS LICENSED AS A HEALTH PROFESSIONAL IN THIS STATE OR ANOTHER STATE
9 AND THE PERSON MEETS THE FOLLOWING CRITERIA:

10 1. IF THE PARTY AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS
11 OFFERED IS OR CLAIMS TO BE A SPECIALIST, SPECIALIZES AT THE TIME OF THE
12 OCCURRENCE THAT IS THE BASIS FOR THE ACTION IN THE SAME SPECIALTY OR CLAIMED
13 SPECIALTY AS THE PARTY AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS
14 OFFERED. IF THE PARTY AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS
15 OFFERED IS OR CLAIMS TO BE A SPECIALIST WHO IS BOARD CERTIFIED, THE EXPERT
16 WITNESS SHALL BE A SPECIALIST WHO IS BOARD CERTIFIED IN THAT SPECIALTY OR
17 CLAIMED SPECIALTY.

18 2. DURING THE YEAR IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO
19 THE LAWSUIT, DEVOTED A MAJORITY OF THE PERSON'S PROFESSIONAL TIME TO EITHER
20 OR BOTH OF THE FOLLOWING:

21 (a) THE ACTIVE CLINICAL PRACTICE OF THE SAME HEALTH PROFESSION AS THE
22 DEFENDANT AND, IF THE DEFENDANT IS OR CLAIMS TO BE A SPECIALIST, IN THE SAME
23 SPECIALTY OR CLAIMED SPECIALTY.

24 (b) THE INSTRUCTION OF STUDENTS IN AN ACCREDITED HEALTH PROFESSIONAL
25 SCHOOL OR ACCREDITED RESIDENCY OR CLINICAL RESEARCH PROGRAM IN THE SAME
26 HEALTH PROFESSION AS THE DEFENDANT AND, IF THE DEFENDANT IS OR CLAIMS TO BE A
27 SPECIALIST, IN AN ACCREDITED HEALTH PROFESSIONAL SCHOOL OR ACCREDITED
28 RESIDENCY OR CLINICAL RESEARCH PROGRAM IN THE SAME SPECIALTY OR CLAIMED
29 SPECIALTY.

30 3. IF THE DEFENDANT IS A GENERAL PRACTITIONER, THE WITNESS HAS DEVOTED
31 A MAJORITY OF THE WITNESS'S PROFESSIONAL TIME IN THE YEAR PRECEDING THE
32 OCCURRENCE GIVING RISE TO THE LAWSUIT TO EITHER OR BOTH OF THE FOLLOWING:

33 (a) ACTIVE CLINICAL PRACTICE AS A GENERAL PRACTITIONER.

34 (b) INSTRUCTION OF STUDENTS IN AN ACCREDITED HEALTH PROFESSIONAL
35 SCHOOL OR ACCREDITED RESIDENCY OR CLINICAL RESEARCH PROGRAM IN THE SAME
36 HEALTH PROFESSION AS THE DEFENDANT.

37 4. IF THE DEFENDANT IS A HEALTH CARE INSTITUTION THAT EMPLOYS A HEALTH
38 PROFESSIONAL AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS OFFERED, THE
39 PROVISIONS OF THIS SUBSECTION APPLY AS IF THE HEALTH PROFESSIONAL WERE THE
40 PARTY OR DEFENDANT AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS OFFERED.

41 B. THIS SECTION DOES NOT LIMIT THE POWER OF THE TRIAL COURT TO
42 DISQUALIFY AN EXPERT WITNESS ON GROUNDS OTHER THAN THE QUALIFICATIONS SET
43 FORTH UNDER THIS SECTION.

1 C. AN EXPERT WITNESS IN A MEDICAL MALPRACTICE CASE SHALL NOT BE
2 PERMITTED TO TESTIFY IF THE FEE OF THE WITNESS IS IN ANY WAY CONTINGENT ON
3 THE OUTCOME OF THE CASE.

4 12-2605. Evidence of admissions; civil proceedings;
5 unanticipated outcomes; medical care

6 IN ANY CIVIL ACTION THAT IS BROUGHT AGAINST A HEALTH CARE PROVIDER AS
7 DEFINED IN SECTION 12-561 OR IN ANY ARBITRATION PROCEEDING THAT RELATES TO
8 THE CIVIL ACTION, ANY STATEMENT, AFFIRMATION, GESTURE OR CONDUCT EXPRESSING
9 APOLOGY, RESPONSIBILITY, LIABILITY, SYMPATHY, COMMISERATION, CONDOLENCE,
10 COMPASSION OR A GENERAL SENSE OF BENEVOLENCE THAT WAS MADE BY A HEALTH CARE
11 PROVIDER OR AN EMPLOYEE OF A HEALTH CARE PROVIDER TO THE PATIENT, A RELATIVE
12 OF THE PATIENT, THE PATIENT'S SURVIVORS OR A HEALTH CARE DECISION MAKER FOR
13 THE PATIENT AND THAT RELATES TO THE DISCOMFORT, PAIN, SUFFERING, INJURY OR
14 DEATH OF THE PATIENT AS THE RESULT OF THE UNANTICIPATED OUTCOME OF MEDICAL
15 CARE IS INADMISSIBLE AS EVIDENCE OF AN ADMISSION OF LIABILITY OR AS EVIDENCE
16 OF AN ADMISSION AGAINST INTEREST.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 18, 2005,

by the following vote: 23 Ayes,

6 Nays, 1 Not Voting

Ken Bennett
President of the Senate
Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 8:05 o'clock a. M.

Wendell Uparra
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 12⁰⁰ o'clock P. M.

J. N. [Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005

at 4:32 o'clock P. M.

Janice K. Brewer
Secretary of State

Passed the House April 11, 20 05,

by the following vote: 39 Ayes,

18 Nays, 3 Not Voting

Passed the Senate February 22, 20 05,

by the following vote: 19 Ayes,

10 Nays, 1 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

[Signature]
President of the Senate

Charmaine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20 _____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20 _____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1036

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20 _____,

at _____ o'clock _____ M.

Secretary of State